IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

COMPANY PETITION NO.636 OF 2000

Saurashtra Cement Ltd. ..Petitioner.

Vs.

Heritage India Club Ltd. ..Respondent.

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Mr. Amol V. Doijode for the Petitioner.
Mr. S.R. Saudagar for the Respondent.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**

16th June, 2007.

P.C. :

1. The claim of the Petitioner is based on an amount of Rs.6 lacs which was placed by the Petitioner with the Respondent company towards the subscription of a club which was to be promoted by the Respondent in collaboration with the Club Corporation of America. The amount of Rs.6 lacs was placed by the Petitioner with the company by a cheque dated 17th July, 1995. In June 1997 a communication was received by the Petitioner stating that 18 members of the Board of Governors have resigned and calling upon the Petitioner to contact one Krishna Kumar Khandelwal for

obtaining refund of the amount paid by him. Despite several letters, the amount has not been refunded to the Petitioner. No club has come into existence nor has any facility been provided by the Respondent company. There was no reply to the statutory notice issued prior to the institution of the proceedings for winding up. In response to the Company Petition a reply has been filed. At the final hearing of the Petition, the only submission which has been urged is that under the rules, regulations and bylaws a member was entitled to the refund of membership fees only after 25 years. There is absolutely no merit in the defence which has been urged at the hearing. In the present case, the entire amount was liable to be refunded since it was an admitted position that no club was ever set up. The monies which were received as subscription towards membership therefore could not be retained by the Respondent. There is clearly a debt due and payable to the Petitioner. The company has no bona fide defence to the Petition for winding up. The Company Petition is accordingly made absolute in terms of prayer clauses (a) and (b).